



Center for Biological Diversity • Defenders of Wildlife •  
Earthjustice • Endangered Species Coalition • Friends of the San  
Juans • Natural Resources Defense Council • Oceana • Orca  
Network • Puget Soundkeeper • Save Our wild Salmon • Seattle  
Aquarium • Sierra Club • Toxic-Free Future • Washington  
Environmental Council • Whale and Dolphin Conservation •  
Whale Scout • Wild Orca

January 23, 2019

Honorable Governor Jay Inslee  
P.O. Box 40002  
Olympia, WA 98504

**RE: Protect Orcas & Salmon with Clean Water Act § 401 Authority**

Dear Governor Inslee,

The Orca Salmon Alliance (OSA) writes on behalf of our seventeen organizations and millions of members, thousands of whom live in Washington State. We ask you to exercise Washington's authority under § 401 of the Clean Water Act to help ensure the Columbia Basin's federal dam operators address rising water temperatures, protect salmon, and help save the Southern Resident orcas from extinction.

Washington has an historic opportunity to feed the starving Southern Resident orcas by protecting critical salmon runs in the Columbia and Snake rivers. The State of Washington can—for the first time ever—require that nine federal hydroelectric dams on the Columbia and Snake rivers meet Washington's water quality standards. **Washington should exercise its § 401 authority to ensure that the Columbia Basin dams provide cool water, adequate spill, and conditions necessary for upstream and downstream salmon migration. Doing so is consistent with Washington State's leadership to save Southern Resident orcas as well as to address climate change.** The Orca Task Force recognized that lower, hotter summer stream and river flows resulting from climate change—if not addressed swiftly and effectively—could undermine recovery efforts for orcas.

The Columbia Basin's once-mighty salmon runs are struggling to survive and, in turn, jeopardizing survival of the Southern Resident orcas. The Southern Resident orcas depend on Columbia Basin spring Chinook at this very time of year (January – April). These fish sustain them through the winter months and feed nursing orca mothers and their calves during a particularly critical time in their life-cycle.

Climate change and dams are combining to warm the Columbia and Snake rivers to unsafe levels. According to the Fish Passage Center, an independent federal agency, the “long-recognized and largely unaddressed problem of high water temperatures” in the Columbia and

# Orca Salmon Alliance

Snake rivers is “an ever-increasing threat to the survival of salmon.”<sup>1</sup> When river temperatures exceed 20°C for several days at a time—as happens with increasing frequency due to climate change<sup>2</sup>—salmon have difficulty migrating upstream and begin succumbing to stress and disease.<sup>3</sup>

Despite the grim outlook for salmon in the face of climate change, recovery remains feasible for many Columbia Basin salmon runs.<sup>4</sup> Congress enacted §401 to allow states to protect their waterways from the impacts of federally permitted activities, like dams, that discharge into state waters.<sup>5</sup> **Washington has the authority to compel changes to the configuration and operation of federal Columbia Basin dams to improve water quality, fish passage, and benefit orcas.**

Many large- and small-scale modifications to the structure and operation of the dams and reservoirs could improve water quality and salmon survival. Ecology should use the § 401 certification process to model and identify how changes to fish ladders, selectively drawing down certain reservoirs, increasing summer flows, possible dam breaching, and other measures can reduce temperature and enhance fish survival.

Despite decades of litigation federal agencies have not complied with the Endangered Species Act, Clean Water Act, or recovered the Columbia Basin’s once-mighty salmon runs.<sup>6</sup> There is little reason to hope that the Trump administration’s BiOp, EIS, and temperature TMDL for the dams will provide better results. The Southern Resident orcas and Columbia Basin salmon can’t wait.<sup>7</sup> **Washington should use its authority under the Clean Water Act to do what the Trump administration and federal agencies cannot or will not—protect orca and restore salmon.**

Thank you for your consideration of our concerns, and your leadership on behalf of the Southern Resident orcas, people, and communities of Washington State. Please contact Giulia Good Stefani, Senior Attorney, Natural Resources Defense Council at (310) 598-8318 or [ggoodstefani@nrdc.org](mailto:ggoodstefani@nrdc.org) for additional information.

---

<sup>1</sup> Fish Passage Center, *Review of April 2016 Draft of NOAA Fisheries report 2015 Sockeye Salmon Passage Report*, p. 1 (May 4, 2016).

<sup>2</sup> John Yearsley, *A semi-Lagrangian water temperature model for advection-dominated river systems*, 45 Water Resources Research, pp. 15–16 (2009).

<sup>3</sup> National Marine Fisheries Service, *2015 Adult Sockeye Salmon Passage Report*, pp. 20–22 (2016).

<sup>4</sup> See, e.g. Fish Passage Center, *Comparative Survival Study 2017 Annual Report*, Fig. 2.10 (Dec. 2017) (predicting that Snake River spring/summer Chinook could recover, given increased spill or Lower Snake River dam removal).

<sup>5</sup> *S. D. Warren Co. v. Maine Bd. of Env’tl. Prot.*, 547 U.S. 370, 386 (2006).

<sup>6</sup> See *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 184 F. Supp. 3d 861 (D. Or. 2016).

<sup>7</sup> WDFW, *News Release: Most of the Columbia River closing to salmon and steelhead fishing* (Sept. 11, 2018).

# Orca Salmon Alliance

Sincerely,



Giulia Good Stefani  
Senior Attorney, Oceans  
Natural Resources Defense Council

Catherine Kilduff  
Senior Attorney  
Center for Biological Diversity

Quinn Read  
Northwest Program Director  
Defenders of Wildlife

Steve Mashuda  
Managing Attorney, Oceans  
Earthjustice

Chiara Rose  
Pacific Coast Representative  
Endangered Species Coalition

Ben Entiknap  
Pacific Campaign Manager and Senior  
Scientist  
Oceana

Cindy Hansen  
Education and Outreach Coordinator  
Orca Network

Alyssa Barton  
Policy Analyst & Executive Coordinator  
Puget Soundkeeper Alliance

Joseph Bogaard  
Executive Director  
Save Our wild Salmon

Nora Nickum  
Ocean Policy Manager  
Seattle Aquarium

Stephanie Hillman  
Campaign Representative  
Sierra Club

Carina Wells  
Campaign Organizer  
Toxic-Free Future

Rein Attemann  
Puget Sound Advocacy Manager  
Washington Environmental Council

Colleen Weiler  
Rekos Fellow for Ocean Conservation  
Whale and Dolphin Conservation

Whitney Neugebauer  
Director  
Whale Scout

Dr. Deborah Giles  
Science and Research Director  
Wild Orca

CC: JT Austin, Senior Policy Advisor Natural Resources, Governor's Office  
Rob Duff, Senior Policy Advisor Environment, Governor's Office  
Maia Bellon, Director, Department of Ecology  
Heather Bartlett, Water Quality Program Manager, Department of Ecology  
Melissa Gildersleeve, Water Quality, Department of Ecology